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IN THE

Supreme Court of the United States

Anthony C. Ayers, Ernest R. King, Denshia Moore, Joseph C. William

Petitioners

v.

Oil, Chemical & Atomic Workers International Union, AFL-CIO
Maelissa R. M. Watson,

Petitioner

v.

Oil, Chemical & Atomic Workers International Union, AFL-CIO

PETITION FOR WRIT OF CERTIORARI

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55 pp

QUESTIONS PRESENTED FOR REVIEW

The public policy questions for review arise out of a union organization campaign wherein union organizers pledged to end race discrimination at a Dallas Plant. The union failed to represent members, and without notice, compromised the rights of workers terminated for concerted protected activity. The Union refuses to have a designated agent for service of process in Texas, and union assistant general counsel, when asked, failed to provide this information. A default judgment was entered. The default judgment was set aside based on briefs of counsel and affidavits of union employees. Later a partial motion for summary judgment was granted. The case was tried before a white jury. The union alleged that one juror may be black. Union lawyers in presenting their case to the jury stereotyped blacks in a manner to invoke traditional attributes of bias and prejudice, and further, to evoked jury contempt against Plaintiffs as having a propensity to sue. Substitute Counsel for Plaintiffs, acting as an officer of the court, was sanctioned for filing a good faith Rule 60 Motion.

Question 1
Should the public policy of Texas be upheld, and service of process on an agent pursuant to the provisions of §17.021 of the Texas Civil Practices and Remedies Code and 29 U.S.C. §185 be sufficient to support a default judgment against a union, doing business in the State and refusing to designate an agent for service of process?

Question 2
Should the public policy of the law, that in a judicial proceeding a witness tell the truth, the whole truth, and nothing but the truth, be diluted by trial tactics, misleading half truths, creative prosecutions and defenses?

Question 3

Should the public policy of the law, obligating an officer of the court, in good faith, to report irregularities, falsehood, and abuse of the judicial process, permit counsel to be sanctioned for exercising that obligation? What remedies are available to the Counsel wrongly sanctioned?

Question 4

Should the public policy of the law require the implementation of safeguards to protect the public and attorneys from abuse from the judiciary?

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BASIS FOR JURISDICTION
MAIN LAWSUIT

Jurisdiction was established and accepted in the Courts below. The lawsuit filed by Anthony Ayers, Ernest King, Denshia Moore, and Joseph Williams (herein "Petitioners") assert claims and causes of action against Defendant Oil, Chemical and Atomic Workers Union AFL-CIO (herein after "Union/OCAW") for breach of contract, good faith and fair dealing, and a duty of fair representation in violation of §301 of the Labor Management Relations Act , 29 U.S.C. A. § 185 (1998), and other statutory provisions introduced without objection in the record, 29 U.S.C.A. § 158 (a)(2) and (b) (1) (a) (1998) . This petition is based on the wrongful set aside of the Default Judgment; the dismissal on partial summary judgment of willful and irrational bad faith actions by Union for abandoning Petitioners statutory rights without notice, in violation of Sections 7 and 8 of the National Labor Relations Act, 29 U.S.C.A. § 157, § 158, and failing to take steps to correct race discrimination at the Dallas plant. The Union further engaged in a racially biased presentation of Petitioners to the Jury at trial in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. § 2000e et seq, [Title VII] Ancillary jurisdiction is present though State statutes Section 17.021 of the Texas Civil Practices and Remedies Code, and its predecessor, Article 2033 (b) of the Texas Revised Statutes. TEX. REV. CIV. STAT. Article 2033(b) Bus. Corp. Act. Art.2

The Judgments and Orders being appealed are:

(1) Set aside of Default Judgment entered 4/29/99 against Oil Chemical and Atomic Workers International Union;

(2) Final Judgment for Defendant Oil, chemical & Atomic Workers International Union 3/9/99; and

(3) United States Court of Appeals For The Fifth Circuit affirmation of the District Court Judgment 5/5/2000 by Circuit Court Judges Reavley, Davis and Barksdale.

BASIS FOR JURISDICTION
SATELLITE SANCTIONS LITIGATION

This Petition is to set aside of Sanctions Judgment, imposed against Petitioner, substitute attorney Maelissa Watson, by the United States District Court, Northern District of Texas, Dallas Division for filing a good faith Rule 60 Motion in her capacity as an officer of the Court. The Court has jurisdiction to hear this Petition in conjunction with the trial of the lawsuit filed by Petitioners, Anthony Ayers, Ernest King, Denshia Moore, and Joseph Williams under the authorized statutes set out above and under Rule 11 and Rule 60 of The Federal Rules of Civil Procedure. Ancillary jurisdiction is present under the Texas Constitution Article 1, Section 5, which provides that oaths taken in a judicial proceedings be "subject to the pains and penalties of perjury." Tex. Penal Code Ann. § 21.05 (Vernon 1974). § 37.02, 37.03, and § 37.04. Texas Disciplinary Rules of Professional Conduct Rule 3:00.

Judgments and Orders being appealed:

(1) Order on Sanctions 8/11/99;
(2) Order Granting Defendant's Fee and Expenses 9/24/99; and
(3) United States Court of Appeals For the Fifth Circuit affirming District Courts Judgment. 5/5/2000 by Circuit Court Judges Reavley, Davis and Barksdale.

Judgments to be Reviewed:

Main Lawsuit Ayers, et.al v. OCAW:

(1) Default Judgment against the Oil, Chemical and Atomic Workers International Union entered 5/15/96; (Record 79)
(2) Order granting Motion To Set Aside Default Judgment entered 4/28/98; (Record 166)
(3) Order Denying motion for Rehearing and, in

alternative for Certification Under 28 U.S.C. 1292 (b) 6/25/98 (Record 205)

(4) Memorandum Opinion and Order granting Partial Summary Judgment 1/28/1999 (Record 254)

(5) Final Judgment 3/9/99 (Record 381)

Satellite Attorney Sanctions Case

(1) Sanctions Order 8/11/99; (Record 1V.85)

(2) Order Granting Defendants Fees and Expenses 9/23/99 (Record 1V 92)

(3) Sanctions Judgment entered against Attorney Maelissa R.M. Watson 9/23/1999;

(4) Judgment Affirmed by The United States Court of Appeals for the Fifth Circuit 6/7/2000, (Circuit Court Judges Reavley, Davis and Barksdale.

(5) Order to stay issuance of the mandate pending petition for writ of certiorari denied

[Motion of appellants for stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED up to and including July 3, 2000.]

STATUTORY AUTHORITY

Labor Management Relations Act 29 U.S.C.A §185 (1998)

SUBCHAPTER 1V- LABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

§185. Suits by and against labor organizations

(a) Venue, amount, and citizenship

Suites for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction over the parties, without respect to the

amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the Unites States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against an individual member or his assets.

(c) Jurisdiction

For the purposes of actions and proceedings by or against labor organizations in the district courts of the Unites States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of Process

The service of summons, subpena, or other legal process any Court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency

For the purposes of this section, in determining whether any person is acting as "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

SUBCHAPTER 11. NATIONAL LABOR RELATIONS

§158. Unfair labor practices

(a) Unfair labor practices

It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *provided,* subject to the rules and regulations made and published by the Board pursuant to section 156 of this title, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(b) Unfair labor practices by labor organization

It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

Tex. Penal Code Ann. § 21.05 (Vernon 1974). § 37.02 defines Perjury

(a) A person commits an offense if, with intent to deceive and with knowledge of the statements meaning:
  (1) he makes a false statement under oath or swears to the truth of a false statement previously made under oath; or
  (2) he makes a false unsworn declaration under Ch. 132, Civil Practices and Remedies Code.

(b) The offense is a Class A Misdemeanor.

§ 37.03 defines Aggravated Perjury

(a) A person commits an offense if he commits perjury as defined in § 37.02 and the false statements:
  (1) is made in connection with an official Court proceeding; and
  (2) is material.

(b) An offense under this section is a felony of the third degree.

The Penal Code at § 37.04 defines materiality:

(a) A statement is material, regardless of the admissibility of the statement under rules of evidence, if it could have effected the course or outcome of the official proceeding.

(b) It is no defense to prosecution under § 37.03 that Declarant mistakenly believed the statement to be immaterial;

(c) Whether a statement is material in a given factual situation is a question of law.

Texas Disciplinary Rules of Professional Conduct 3:03. Rule 3.03 Candor towards the Tribunal

(a) A lawyer shall not knowingly:
  (1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;
(3) in an ex parte proceeding, fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known to the entity for it to make an informed decision;
(4) fail to disclose to the tribunal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
(5) offer or use evidence that the lawyer knows to be false.

COMMENTARIES TX Rules 1.15(a) (1) and (b) 2, (4). 1.05 (c) (7) on Anticipated False Evidence and Past False Evidence

Anticipated False Evidence

(5) On occasion a lawyer may be asked to place in evidence testimony or other materials that the lawyer knows to be false. Initially in such situations, a lawyer should urge the client or other person involved to not offer false or fabricated evidence. However, whether such evidence is provided by the client or another person, the lawyer must refuse to offer it, regardless of the client's wishes. As to a lawyer's right to refuse to offer testimony or other evidence that the lawyer believes is false, see paragraph 15 of this Comment.

Past False Evidence

(7) It is possible, however, that a lawyer will place testimony or other material into evidence and only later learn of its falsity. When such testimony or other evidence is offered by the client, problems arise between the lawyer's duty to keep the client's revelations confidential and the duty of candor to the tribunal. Under

this Rule, upon ascertaining the material testimony or other evidence is false, the lawyer must first seek to persuade the client to correct the false testimony or other false evidence or to withdraw the false evidence. If the persuasion is ineffective, the lawyer must take remedial measures.

Section 17.021 of the Texas Civil Practices and Remedies Code provides:

(a) In an action against an individual, partnership, unincorporated association arise in a county in which the individual, partnership or association has an office, place of business or agency if:
  (1) the action grows out of or if connected with the business transacted in this state; and
  (2) the individual, partnership or association:
    (A) is not a resident of this county;
    (B) is not a resident of this state; or
    (C) is a resident of the county but has not been found for service of process.

(c) Service of process on an agent or clerk under this section has the effect of personal service on the principal individual, partnership or unincorporated association.

BASED ON THE FACTS THE REASONS WHY WRIT OF CERTIORARI SHOULD BE GRANTED

The public policy issues raised in this Petition have real basic, practical, and significant importance, and are issues that are foremost on the minds of the average American. This Petition gives the Supreme Court an opportunity to offer much needed guidance on critical issues of public policy law. Issues the Court may have taken for granted, issues that should through time have gone away, but have not.

Firstly, protection from exploitation of the average working man by Unions that hold a protected and privileged position under American Labor Law. It is also about the short shift given to employment discrimination cases in Federal Courts in Texas, and the ever narrowing interpretation given civil rights in the Fifth Circuit Court of Appeals in New Orleans.

Secondly, the Court systems especially the Federal Courts, are as antiquated for our age as the Court of Common Pleas and Exchequer were centuries ago in England when the Courts of Equity were introduced to mitigate the rigors and technicalities of the forms of action. The Court system in the United States is in crisis and not meeting the needs of the average citizen. The emphasis is on form, for e.g., if documents are in 12 point pitch or 14 point not on the merits of the actions and the administration of justice. Form has taken precedence over the merits and rational basis forming the content of pleadings. The credibility, functionability, and integrity of the Judicial System in the resolution of disputes is seriously questioned by an irate and frustrated public.

Many national and multinational corporations, who can afford to pay for private adjudication, can no longer deal with the cumbersome and lengthy time consuming procedures of commercial litigation in the Federal Court system. Many important business disputes are in increasing numbers, being resolved by private justice through arbitration and mediation. A strong, independent, fair, and accessible judiciary is the hallmark of a free and progressive society. If the Supreme Court of the United States digs its head in the sand and fails to opine on the sanctity of the oath, to tell the truth, the whole truth, and nothing but the truth, and the important role that lawyers play as officers of the Court in the administration of justice, serious societal consequences will ensue. The average citizen knows that the courts in the United States are in jeopardy status, and this can only

be remedied when public confidence is restored in the judicial process, and our judicial tribunals conduct their business in an efficient, fair, rational, and orderly manner.

Thirdly, The character, temperament, and policing of Judges who abuse the power entrusted to them by the Constitution and the people of the United States should be seriously examined by the Supreme Court, and safeguards implemented over and above those already in place.

Pertinent to the facts relating to this Petition, the "reasons why" are now expanded.

The Privileged Positions of Unions

It may seem almost trite to say that this Petition is about basic justice, equality, and fairness. It is about civil rights, labor and employment fair representation. It is bringing before the highest Court in the land the fact that it is almost impossible for a black person in the metropolitan Dallas-Ft. Worth area, to find a private or public lawyer to represent him in a race discrimination lawsuit. Yet the Courts deems fit to sanction the few lawyers who do. Deserving employment law cases are frequently not filed and for the few that are filed many are being simply dismissed and disposed of on Summary Judgment in the Northern District of Texas Federal Courts. The Ft. Worth Division is even worse than Dallas, where Judge Mc Bryde will not give a Plaintiffs enough time to present the evidence, and in Discovery will not order production of a Personnel File.

Four Petitioners' in this Petition are black citizens of the United States. These black citizens have minimal education and were performing dangerous, manual labor at the Ashland Chemical Plant in Dallas, Texas. While Dallas may today pride itself as a modern international city and not part of the deep South, its culture and

governance still reflects a lot of the prejudices and stereotypes of old.

The Petitioners are: Joseph Williams, a hard working former veteran in his late 50's; Denshia Moore, a young independent, hard working single mother in her 20's; Anthony Ayers, a proud, ambitious young black man in his 30's seeking the American dream; and Ernest King, a good natured individual in his 40's who lives with and takes care of his elderly Mother. All four were relatively long term employees of Ashland Chemical, and while they suffered the effects of past race discrimination in terms of promotion and advancement, they at least had a job, and were proud, productive members of their churches and communities.

The Oil, Chemical, and Atomic Workers Union, ("OCAW") targeted the Dallas Ashland Plant for unionization, promising better working conditions, better pay, and an end to race discrimination at the Dallas Plant. Ashland violently opposed unionization. The record supporting this Petition demonstrates the results of the unionization and a summary of the Collective Bargaining Agreement that was ultimately signed, giving workers lower wages, reduced vacation, reduced benefits (couched in a manner to exclude statutory benefits under the Family Medical Leave Act and the Americans With Disabilities Act) at a time when Ashland was making an all time record high profit of $120 million, is clearly documented. Petitioner Ayers originally the head of the Union negotiating Committee, after his termination, was replaced with Company controlled employees with the blessing of the Union. As a condition precedent to securing this sweetheart (per se illegal) Collective Bargaining Agreement, the Union, without notice, withdrew and dismissed Plaintiffs NLRB Complaints (filed as meritorious by the Union) thereby forfeiting Plaintiffs' appeal rights. The Collective Bargaining Agreement benefited nobody but the Union and Ashland,

certainly not the workers. The Union cannot find shelter behind old, Supreme Court decisions of the greater good for the many at the expense of the few, because there was no good for the many-the rank and file workers at the Dallas Ashland Plant. Race discrimination is worse than before, with black employees being terminated in higher numbers.

Public policy requires the Supreme Court to carefully examine the special privileges given to Labor Organizations under federal laws and the reciprocal obligations that unions should exercise towards its members and the working public. This is especially important because Unions appear under the current application of federal laws to get away scott free with gross misrepresentations and breach of contract, while other organizations are subjected to deceptive trade practices.

The Integrity of The Judicial Process

This Petition emerged from a trial before Chief Judge Jerry Buchmeyer in the Northern District of Texas, Dallas Division. The Jury panel predominately consisted of white and Hispanic persons with business backgrounds and a regional heritage. The Union struck two black veniremen and Petitioners trial counsel, by mistake, struck the third black venirewomen. (The Union maintains from visual observation that a black juror remained on the Jury. Plaintiffs' from their visual observations claim that there was no black person left on the Jury. In the Record the Judge appeared to in doubt) Petitioners trial counsel made a *Bateson* Challenge but the Judge accepted the Union lawyers pretext for striking the black jurors. The record on Voir Dire further shows that the Jury telegraphed contempt for persons who sue.

At the commencement of the trial, Petitioners trial counsel exposed the Union's racial bias against

Petitioners, and the fact that the Union lawyers and Union representatives were all white. This pronouncement, it was visually observed, went over with the Jury like a lead balloon. From that point forward, Petitioners knew that they were walking on egg shells with this Jury on race issues. The Union lawyer, with great finesse, subtlety exploited race and the anti-litigious sentiment that was previously demonstrated. This exploitation conduct is contrary to the Texas Code of Ethics, and the ABA Model Rules 3.03 Candor Towards the Tribunal and Rule 3.04 Fairness in Adjudicatory Proceedings. The Union lawyer repeatedly referred to Maelissa Watson as Joseph William's lawyer, and in a non-professional and impertinent manner visually pointed her out, more than once, to the Jury in open court. The case being tried was a Union failure of representation case under an exclusive representation agreement. Yet the Union intimated that Petitioners had their own lawyer and she could have represented them. The innuendo clearly to the Jury was, what are they complaining about, they had their own lawyer - she could have represented them. Juries do not understand the nuances of legal representation. To the average man in the street, a lawyer is a lawyer.

The record also reflects that the Union while not in exact words, but by their actions portrayed the Plaintiffs in a stereotypical manner as black persons looking for a hand out and money grabbing blacks. For example, the hat was passed round for Denshia Moore, and the Union Organizer gave Tony Ayers money out of his own pocket. The record clearly reflects this egregious conduct. It is unfortunate that there is not a video of the trial because a picture is worth a thousand words, and actions speak louder than words.

On the suing issue, no more descriptive words than sue happy were in Petitioners counsel's lexicon, to describe what went on; and were the words used in the

Rule 60 Motion, to describe and explain the prejudicial and inflammatory way that the Union portrayed Petitioners to the Jury. Repeated examination by Union Counsel undoubtedly made the point that Petitioners were in the habit of suing. This was totally irrelevant as to whether the union was in breach of contract in failing to represent Petitioners, and in failing to take any steps to end race discrimination at the Dallas Plant as promised. Petitioners were asked if they sued Ashland and filed charges with the NLRB, the EEOC, etc. Petitioners are not sophisticated enough to understand the procedural details of administrative litigation, and cannot distinguish an EEOC Charge, an NLRB Complaint, from a lawsuit in Federal Court. Petitioner Anthony Ayers, when asked about his lawsuit against Ashland, he replied, it was "on hold," because that is what he thought. In reality, it was dismissed on Summary Judgment by Judge Maloney, when *Anderson, Ayers et.al.* were unable to pay the copying costs, their contingency fee lawyer was permitted to withdraw. At the withdrawal hearing, Judge Maloney told the black litigants that they should read the Rules of Federal Procedure so they could represent themselves. The Court should take judicial notice of the fact that at least 40% of lawyers nationwide do not comprehend the Rules of Federal Procedure. How can a rational Judge, knowing the limited ability of poor black persons (most of whom had not completed more than an Twelfth Grade education) to read, much less comprehend, complicated procedural rules. The reading of the Rules of Federal Procedure is but one example of how out of touch with reality the Federal Courts are in the Northern District of Texas.

The Union's local counsel did not adhere to Texas Rule 3:03(a) (5) or follow ABA Model Rule 3.3 (a) (4) after the Rule 60 Motion was filed pointing to new evidence regarding his obligation to investigate between anticipated false evidence and past false evidence because he may not have had full disclosure of all the facts, as

local counsel, prior to trial. Further, when local counsel was advised in open court that Petitioner, Attorney Maelissa Watson had provided his Firm with a copy of Judge Maloney's decision he made no effort to correct the record, withdraw, or advise Judge Buchmeyer further.

Motions In Limine are in the generals public's perception a subterfuge to keep material evidence from the Jury. The public is beginning to realize that this is one of the primary advantages of commercial arbitration in private adjudication visa a vis trial of commercial litigation issues before a Jury. The three member Panel of Arbitrators see, and give the relevant weight to all the evidence. Furthermore, in this Petition, the Union in their Motion in Limine admitted that any mention of litigation, suing, and lawsuits would be prejudicial. Yet the Union plunged full force ahead exposing perceived lawsuits and deliberately attempted to hold the Petitioners out in a bad light, including, information they themselves initially sought to conceal from the Jury. Public Policy is waiting for and relying on the Supreme Court to offer guidance on the exact impact of admissions made in Motions In Limine. Here the Union presented and signed their Motion In Limine and then blatantly violated the standard they themselves requested for the trial.

The Oath

The Texas Constitution provides that oaths taken in a judicial proceedings be "subject to the pains and penalties of perjury." (Article 1, Section 5 of the Texas Constitution) *See* article in the Record by Braden W. Sparks Dallas Bar Headnotes April 1999 quoting William Galberson , New York Times Writer:

> "that 'minor lies' under oath sometimes bring major consequences. Citing, inter alia, the perjury conviction of a Texas Judge who declared that he bought

> flowers for his staff, but gave them to his wife, Glaberson concluded that perjury prosecutions are a crucial deterrent in the legal system. However, he noted that out of 49,655 federal criminal prosecutions filed in 1997, only 87 (0.17%) dealt with perjury. In short, since our legal system depends on truthfulness, it is doubtful that perjury laws are adequately enforced."

Chief Judge Buchmeyer failed to follow the Texas Constitution, and when requested to make a legal ruling on the Texas Perjury statute briefed for the Court, he refused based on the facts of this case, to take the legal issue under consideration.

The importance of the witness oath to the basic functioning of the judicial process, and the role the lawyer plays in promoting truth from the client cannot be downplayed or ignored. If ever in the history of these United States, the public and the Bar need guidance on the nature and sanctity of the witness oath, it is today. Lack of respect and understanding is prevalent in our country, and many members of the public ask their lawyers "what to you want me to say?"

The Sanctions

A Lawyers Responsibility

A lawyer is a representative of clients, an officer of the legal system and a public citizen having responsibility for the quality of justice. Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standard of ethical conduct.

Texas Rules of Professional Conduct Preamble 1

Substitute Counsel Maelissa Watson was wrongfully and unfairly sanctioned when, as an officer of the Court, she reported to the Court what she was legally, ethically, and morally obligated to do. Petitioner, Attorney Watson, is an officer of the Court of the Northern District of Texas for over 20 years and a Barrister of the King's Inns of Court. She was sworn in as Junior Counsel in 1966 before the Supreme Court of Ireland and pledged to honor and uphold the law. Attorney Watson advised the Court, that Petitioners because of the Union attorneys misconduct, did not get a fair trial and that from her personal knowledge, Union organizer John Dykes did not tell the whole truth regarding his communications with Attorney Watson.

Ironically, Judge Buchmeyer has the reputation of being sympathetic to minorities. Judge Buchmeyer prides himself on his civil rights record but in recent years his reactions have become unpredictable. The Supreme Court can take judicial notice, with a "library card," of Judge Buchmeyer's public activities, and access years and years of Judge Buchmeyer's Column, in the Texas Bar Journal. While the Judges column is generally humorous and entertaining, it also is frequently demeaning to women. The article in the June 2000 issue of "D Magazine" addresses Judge Buchmeyer's big ego and the bevy of lawyers he patronizes and favors. No doubt he favors Union lawyers and his cronies, but Attorney Watson is not part of the Club.

No Attorney should ever again be subjected to the abusive behavior, interruptions, screaming, that Petitioner Attorney Watson was subjected to by being told more than once to shut up and sit down while she was respectfully trying to address the Court. Judge Buchmeyer's judicial rage was unjudicial. Instead of fairly asking questions of both sides and impartially adjudicating the issues raised, Judge Buchmeyer took

sides, he defended the Plaintiffs trial counsel, well known to him, never asked the Union lawyers one question relating to the truth of the testimony presented in Court, or what background investigation the lawyers made in preparing the Affidavits to have the default judgment set aside or preparing the witness for trial. (Perhaps he knew the answers so he did not ask the questions.) He even took the position that the Union Organizer was an unwilling witness against the Petitioners. The Judges primary concern was the impact of the Rule 60 Motion on the careers of two budding Union lawyers.

The outburst and rage that Judge Buchmeyer exhibited in his Courtroom on August 10, 1999, was not that of a rational person and was not normal judicial behavior, it was that of an ego gone berserk. When told that awarding sanctions in cases such as this one would have a chilling effect on a lawyers' representation of poor people. The record cannot convey the viciousness and sarcasms in Judge Buchmeyer's voice when he said, "It will have a chilling effect on you." Judge Buchmeyer's attitude is how could anyone have the audacity to question the conduct of a trial in his Court. The irrationality and bazaar behavior are clearly demonstrated in his Order barring Attorney Watson from ever appearing before him as he "could not be fair to anyone she represented."

This, coupled with an approximate $8,000 monetary judgment, based on a statement not documented in the normal and customary manner of presenting legal invoices (breaking down hours spent on particular tasks, consultations, showing identity of persons telephoned, date and length of telephone conference) were all unsubstantiated. To compensate the fees and costs of two Union lawyers in a failure to represent case when one lawyer should have been adequate, was not reasonable. On a Motion for Rehearing, all these issues were raised. Furthermore, the

court refused to consider the law on sanctions where special consideration can be given to substitute lawyers or to consider pleas for community service in lieu of monetary sanctions were financial hardship could be an issue. All pleas for understanding, mitigation, relief, and reconsideration were ignored.

Sanctions are a very powerful weapon in an individual Judges arsenal and should not be used lightly or for the wrong reasons. Satellite litigation resulting from sanctions generates more controversy and clogs the courts dockets even further. Since Rule 11 historically was a creature of equity, the whole process should be anointed with equitable and fair standards from the Supreme Court. Less discretion should be left to individual Judges for abuse of the process, or the Supreme Court might recommend an independent Judicial Review Committee or a Court Ombudsman be put in place, to review belatedly unfair and wrongfully issued sanctions before appealing to the Circuit Courts. After all, reconsideration or rehearing by the Judge who administers sanctions sometimes can be fruitless. There is also the fear factor for the practicing lawyer of reprisal from an individual Judge.

Sad to say, the Judicial System again broke down in the Fifth Circuit. The Jury decision was first appealed, Case No. 99-10384 and a little later, Petitioner Attorney Watson, also appealed the Sanctions Judgment No.99-11006. Two filing fees were paid. Both cases were consolidated upon Petition by the Union but not before the briefing schedule was in place for both briefs. The Main Brief was submitted first and the Sanctions Brief second. Some clerk decided that in a Consolidated Case there should be only one Brief, and without phone call or other explanation to counsel, "disposed" of the whole package. This came to light after oral argument was scheduled and non-refundable air tickets were purchased to New Orleans. A case administrator telephoned

Attorney Watson asking that the Sanction Brief be faxed as somebody at the Court saw reference to it in the Reply Brief. The Sanctions Brief was faxed but not the Appendix. Another phone call was made to the Court asking where were the original and nine bound copies of the Sanctions Brief and Appendix submitted to the Court? The answer was they were disposed of, query, does that mean thrown away?, and the reply was "yes". Petitioners Sanctions Brief was thrown in the trash. This is truly irresponsible, indeed disheartening conduct by Court officials. It shows a reckless and wonted disregard for a party and for an attorney who spent countless hours preparing that Brief. The Sanctions Brief and this Petition were prepared under difficult and adverse circumstances.

The Record in this case is back in the District Court in Dallas available to the Supreme Court to review. The four plus volumes are replete with citations and discussions of all the pertinent cases. These Petitioners are following the Court's instructions to tell the Court in simple language the reasons why a Writ of Certiorari should be issued. There is not time to regenerate all the cases cited therein at this time. The time given to file this Petition for Writ of Certiorari, although certainly within the rules, by Justice Thomas M. Reavely (approximately three weeks when notice was received first class mail) gives very little time when it is directed to an older, semi-retired sole practitioner, crippled with arthritis and recuperating from eye surgery. Nevertheless, the opportunity to bring to the attention of the Supreme Court of the United States all these crucial issues of public policy is a privilege and an honor.

Conclusion

In summary, the grounds on which the Petition for Certiorari is filed is fully within the ambit of Rule 10, of the Supreme Court Rules, regarding jurisdiction on Writ of Certiorari and is based on the following:

(1) Chief Jerry Buchmeyer, of The United States District Court for the Northern District of Texas, as reflected in the Record, has so far departed from the accepted and usual course of judicial proceedings, and the United States Court of Appeals for the Fifth Circuit has, without oral argument, waived its right to question union counsel:

(a) on the veracity of Union witness testimony and the Unions understanding of the nature of the oath;
(b) non- disclosures to the Court; and
(c) non-adherence to the Texas Code of Professional Conduct ;

all, as to call for an exercise of the Supreme Court's power of supervision.

(2) The United States District Court for the Fifth Circuit refused to address a critical issue of Public Policy resulting in abuse of the judicial process that is of extreme public importance regarding service of process pursuant to statute in the State of Texas. In the instant Petition, the Union Defendant-Appellant deliberately flaunted and circumvented State law with impunity.

(3) The United States District Court for the Northern District has decided an important question of federal law relating to contractual rights and obligations under a Union representation contract in a way that conflicts with and expands the Supreme Court of the United States decisions in a manner not within the ambit of the original decisions.

(4) The United States Federal District Court improperly punished and sanctioned an Officer of the Court, based on filing a good faith Rule 60 Motion on behalf of Petitioners. A Motion that Petitioners had a legal right to file for relief under Judgment allegedly improperly obtained. The United States District Court

further based the monetary sanctions awarded to two union attorneys on conventionally non-acceptable documentation as to attorney fees and costs, all in the context of Union failure to represent case. The Motion for Sanctions was to punish Petitioner attorney for exercising her legal and ethical obligation to bring to the court's attention improprieties regarding presentation of witness testimony, previous knowledge by Union Counsel as to certain facts that were not disclosed to the court, and improper presentation of testimony to the jury. The Federal District Court ignored the presentation of highly prejudicial testimony to the Jury, ignoring admission by union counsel in their Motion In Limine that this very same testimony, if presented, would be inflammatory. Despite the record, Union, Defendant-Appellee, brought these issues before the Jury in a deliberate and prejudicial manner.

Respectfully submitted,

Maelissa R.M. Watson
Counsel of Record
6956 Lakeshore Drive
Garden Suite
Dallas, Texas 75214
Tel: (214) 361-4822
Address until July 31, 2000
230 Wait Avenue
Ithaca, New York 14850
Tel: (607) 257-6186

APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANTHONY C. AYERS,	§	
ERNEST R. KING,	§	
DENSHIA MOORE, and	§	CIVIL ACTION NO.
JOSEPH C. WILLIAMS	§	CA 3:95-CV-2754-R
Plaintiff	§	
V.	§	
OIL, CHEMICAL &	§	
ATOMIC WORKERS	§	
INTERNATIONAL	§	Record 090
UNION, AFL-CIO	§	
Defendant	§	

DECLARATION OF DAVID MUSSLEWHITE

DAVID MUSSLEWHITE, UNDER PENALTY OF PERJURY, declares as follows:

1 I am an attorney licensed by the State of Texas. I have previously represented the Plaintiffs in this litigation. I have never been convicted of any crime. I am fully competent to make this declaration and make it on personal knowledge. The statements herein are true and correct.

2. On or about November 16, 1995, my staff telephoned Kathleen Hostettler, a staff attorney for the defendant Union, working at the union headquarters in Lakewood, Colorado. They told her that I intended the next day to file a lawsuit against the union in the Northern District of Texas based on the derelictions of the union's duties to four of its members who were employed by Ashland Oil. They asked her whom I should serve. She said she would let us know. She did not call us back, and

so I wrote and faxed the letter attached hereto as Exhibit A. She did not respond to that letter, either.

3. Thereafter we served Michael L. Johnson. He was a union representative and a signatory on behalf of the Defendant Union of the union's collective bargaining agreement with Ashland Oil. He was clearly an agent for the union for matters involved in this litigation and the place where he worked, the Ashland Oil offices in Dallas, was the place of business of the Union in Dallas County.

" I declare under penalty of perjury that the foregoing is true and correct: Executed on August 4, 1997."

"S" David Musslewhite
DAVID MUSSLEWHITE

EXHIBIT "A"

DAVID MUSSLEWHITE
Attorney & Counselor
750 N. St. Paul, Suite 520
Dallas, Texas 75201

Telephone 214.953.2300 Facsimile 214-953-3085

November 17, 1995

Ms. Kathleen Hostettler
OCAW Legal Department
Denver, CO.

Dear Ms. Hostettler:

I am writing you this letter to obtain the name of the person who will accept service of process for OCAW in a lawsuit for the above referenced case. Our co-counsel in this case needs to file suit in this case today and we would greatly appreciate a response to our request by today, Friday, November 17, 1995. Due to the time difference we need to hear from your office within the next hour. I realize this a request lacking timeliness but appreciate any assistance you can provide. Please either call my assistant Karen Nehama or Debbie Wright or fax them at the numbers on the letterhead above.

We appreciate your assistance in this matter. Please feel free to relay any questions or concerns you may have to us regarding this matter.

Sincerely,
"S/ " David Musslewhite

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANTHONY C. AYERS,	§	Filed May, 23 1996
ERNEST R. KING,	§	
DENSHIA MOORE, and	§	CIVIL ACTION NO.
JOSEPH C. WILLIAMS	§	CA 3:95-CV-2754-R
Plaintiff	§	
V.	§	
OIL, CHEMICAL &	§	Entered on Docket
ATOMIC WORKERS	§	5/24 Pursuant
INTERNATIONAL	§	To F.R.C.P. Rules 58 & 79a
UNION, AFL-CIO	§	Record 115
Defendant	§	

DEFAULT JUDEMENT

Plaintiffs having moved pursuant to Rule 55(b) of the Federal Rules of Civil Procedure for default judgment and the clerk having already entered default, it is therefore

ORDERED, ADJUDGED AND DECREED that judgment is herby entered against Defendant Oil, Chemical and Atomic Workers International Union, AFL-CIO, in favor of Anthony C. Ayers in the amount of $586,089.74; in favor of Ernest R. King in the amount of $444,867.30; in favor of Denshia Moore in the amount of $724,347.00; and in favor of Joseph C. Williams in the amount of $930,428.00, all such amounts to accrue interest from the date of entry of this judgment at the rate of ten percent per annum; and it is further

ORDERED, ADJUDGED AND DECREED that all

costs shall be assessed against Defendant Oil, Chemical and Atomic Workers International Union, AFL-CIO; and it is further

ORDERED, ADJUDGED AND DECREED that the all writs and processes in aid of this judgment and its satisfaction shall hereafter be issued; and it is further

ORDERED, ADJUDGED AND DECREED that any relief not hereby granted is denied.

Dated: 22 – May – 96

"S/" Jerry Buchmeyer

JERRY BUCHMEYER, CHIEF JUDGE

UNITED STATES DISTRICT JUDGE

AFFIDAVIT

STATE OF LOUISIANA:

Record 050

PARISH OF UNION:

JIMMY ROAN, deposes and says:

"1. My name is JIMMY ROAN. I reside Rt.. 1, Box 8725, Sterlington, Louisiana 71280. I am over the age of 18 and competent to make this Affidavit and it is based on my personal knowledge.

2. I am an International Representative for the Oil, Chemical and Atomic Workers International Union. I have been an International Representative for approximately 20 years.

3. The International Union has approximately sixty (60) International Representatives stationed all over the United States to assist in organizing activities, contract administration, and other matters for the Union.

4. In 1995, I was assigned to represent various employees in Dallas, Tyler, Longview, Texas and Sheveport and Monroe, Louisiana. One of my assignments included the negotiations for Ashland Chemical contract in Dallas.

5. A Michael Johnson was one of our three Employee Committee Members who assisted me in the Ashland contract negotiations. The Three Employee Committee Members were not elected officers of the OCAW International or its Local 4-

6 I had no knowledge of the lawsuit filed by Anthony C. Ayers, Ernest R. King, Denshia Moore, and Joseph C. Williams, until I was notified of the suit this week by the General Counsel's office in Denver. I have never seen the lawsuit and had no knowledge that it was filed or served on anyone in 1995.

7 I am not an authorized agent to accept service of lawsuits for OCAW. Likewise, Michael Johnson, who was an employee of Ashland, was not an agent for accepting service for either the International Union or the Local Union."

"S/ " JIMMY ROAN

SWORN TO AND SUBSCRIBED BEFORE ME on this 15th day of July, 1997.

"S/" Don H. Johnson
Notary Public In and For
The State of Louisiana
My Commission Expires (illegible)
Don H. Johnson

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANTHONY C. AYERS,	§	
ERNEST R. KING,	§	
DENSHIA MOORE, and	§	CIVIL ACTION NO.
JOSEPH C. WILLIAMS	§	CA 3:95-CV-2754-R
Plaintiff	§	
V.	§	
OIL, CHEMICAL &	§	
ATOMIC WORKERS	§	
INTERNATIONAL	§	
UNION, AFL-CIO	§	Record 39
Defendant	§	

AFFIDAVIT OF ROBERT E. WAGES

Comes now Robert re. Wages, who swears under penalty of perjury as follows:

1. I am currently President of the Oil, Chemical& Atomic Workers International Union, AFL-CIO (" International" herein) and have held this office since August of 1991.

2. In addition, I am an attorney admitted to the bars of Colorado and Missouri.

3. Attached hereto is a copy of the International Constitution and Bylaws as Exhibit 1.

4. Pursuant to Article 1, Section 5 of the International Constitution and Bylaws, only individuals authorized in a writing signed by an appropriate official designated to so

act may act as agents for the International or any chartered or subordinate body of the International.

5. The International was not served, nor were any of the authorized agents, in the captioned civil action. The first notice the International had of this civil action was July 3, 1997.

6. The International was told that an individual named Michael T. Johnson allegedly signed a notice of service in this action at an address on Central Expressway in Dallas, Texas on November 21, 1997. Mr. Johnson is not and never has been an authorized agent of the International.

FURTHER AFFIANT SAYETH NOT.

Dated this 7th day of July, 1997.

"S/:" Robert E. Wages, President

STATE OF COLORADO }
} ss.
COUNTY OF JEFFERSON }

Robert E. Wages, known to me, executed the foregoing Affidavit of Robert E. Wages this 7th day of July 1997, and is so doing verified and acknowledged that the information set forth therein is true and correct based upon his personal knowledge and belief.

" S/: " Dolores Montoya
Notary Public
255 Union Blvd., Suite # 390
Lakewood, Co 80228

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANTHONY C. AYERS,	§	
ERNEST R. KING,	§	
DENSHIA MOORE, and	§	CIVIL ACTION NO.
JOSEPH C. WILLIAMS	§	CA 3:95-CV-2754-R
Plaintiff	§	
V.	§	
OIL, CHEMICAL &	§	
ATOMIC WORKERS	§	
INTERNATIONAL	§	
UNION, AFL-CIO	§	Record 150
Defendant	§	

DECLARATION OF KATHLEEN A. HOSTETLER

KATHLEEN A. HOSTETLER, under penalty of perjury, declares as follows:

1) I am General Counsel of the Oil, Chemical and Atomic Workers International Union ("International"). The headquarters of the International is located in Lakewood, Colorado. The International also has regional offices in Fairfax, Virginia; Whiting, Indiana; Long Beach, California; and the Houston suburb of Webster, Texas. Regional offices are headed by Regional Directors who are employees of the International Union and are appointed by the International president. The International does not maintain an office in Dallas county.

2) The International is governed by an eight person Executive Board and four Administrative Offices which include the President, Secretary-Treasurer and two

(2) Vice Presidents.

3) The International has its own Constitution that is separate and distinct from the Constitution of local unions. Each of these locals is a separate legal entity with its own financial resources. Each local is required to file its own tax returns with the IRS and financial disclosures with the Department of Labor. Each of these locals has its own Constitution and its own officers and Executive Board.

4) Before becoming an employee of the International, I was an associate of the law form of John W. McKendree who was General Counsel of the International Union; in that capacity, I represented a number of OCAW local unions and the International. In some cases, I was not able to represent both the local and the International because of a possible conflict of interest.

5) Whenever a plant or group is organized, it either becomes part of an existing local or a new local is chartered. When a CBA is signed, it is signed in the name of the International and the local. The International and the local are separate parties to the contract. As such, the local or the International may file suit to enforce the contract. In fact, it is often the case that a local will bring a legal action without the International being a party. Even when a local and the International are both parties to a lawsuit, it is often the case that the local and the International are represented by separate law firms.

6) In the instant case, when Ashland Chemical group was organized, it was assigned to Local 4-208. At that point, the Ashland group became a "unit"

with the local union. As a unit within an amalgamated local, the Ashland group came under the jurisdiction of the Constitution and By-laws of the local union.

7) Local 4-208 has its own Executive Board and its officers. The Local maintains its own office at 15001 Trinity Boulevard, Fort Worth, Texas. At no time has the Local maintained an office at Ashland facility where service of process is alleged to have been effectuated.

I declare under penalty of perjury that the foregoing is true and correct:

Executed on September 5, 1997.

"S/" Kathleen A. Hostetler
General Counsel
Oil, Chemical and Atomic
Workers International Union

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANTHONY C. AYERS,	§	
ERNEST R. KING,	§	
DENSHIA MOORE, and	§	CIVIL ACTION NO.
JOSEPH C. WILLIAMS	§	CA 3:95-CV-2754-R
Plaintiff	§	
	§	
V.	§	
OIL, CHEMICAL &	§	Filed Apr 24 1998
ATOMIC WORKERS	§	
INTERNATIONAL	§	
UNION, AFL-CIO	§	Record 161
Defendant	§	

PLAINTIFFS' OBJECTIONS TO THE REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiffs file this, their objections to the report and Recommendation of the United States Magistrate Judge in this matter filed on April 13, 1998, and served on April 14, 1998, and state as follows:

Defendant has moved under Rule 60(b) of the Federal Rules of Civil Procedure to set aside the default judgment previously entered by this court. The sole issue is whether the service on Michael Johnson... was sufficient to bind the Defendant. The report and recommendation of the United States Magistrate's concludes that " neither the declaration of Floyd Moss, nor that of Michael Johnson... establishes Johnson was an

agent upon whom service of process could be served pursuant to §17.021 of the Texas Civil Practice and Remedies Code, at the time he received the summons and complaint in this civil action." That simply is not the case.

Section 17.021 of the Texas Civil Practice and Remedies Code Provides:

(a) In an action against an ... unincorporated association that arise in a county in which the ... association has an office, place of business or agency for transaction business in this state, citation or other civil process may be served on an agent or clerk employed in the office, place of business or agency if:

(1) The action grows out of or is connected with the business transacted in this state; and

(2) the ....association
(A) is not a resident of this county

The facts of this case make it clear that the union was transacting business at the premises of Ashland Oil Company, that this action is connected with the business it transacts in this state, that the union's place of business was the Ashland premises and that Michael Johnson was an agent employed in the place of business on the OCAW's business.

A reading of this Complaint makes it very clear that this action arises out of the union's representation of the plaintiffs, and representation of union members working for Ashland is the business that OCAW transacts in Dallas County. The OCAW is not a resident of Dallas County. The union constitution attached as an Exhibit to

the Wages Affidavit served as part of Defendant's Motion to Set Aside Default Judgment indicates that the union's headquarters are in Lakewood, Colorado. It is further clear from the facts that the OCAW has a place of business at the Ashland premises. The declaration of Floyd Moss, attached thereto, sets out the facts:

> 2. I worked at the Ashland Oil facility in Dallas, which is located at the 8201 South Central Expressway, Dallas, Texas (the "Premises"). I was employed there when Plaintiffs in the case were terminated, and I was employed there on November 21, 1996, when Michael Johnson was served with the summons in the case.
>
> 3. While I was working at Ashland, the only place of business that the Union, OCAW, had was the Premises. The union had no union hall. The union had a bulletin board reserved for its use on the Premises. Notice for union meetings and for other union matters were posted on the bulletin board on the Premises or were delivered to the union members' mailboxes on the Premises. There was also a telephone at the Premises that was reserved for use by the Union -- it could only be used by the three union representatives, one of whom was Michael Johnson. I received and signed my union card on the Premises of Ashland Oil. The paychecks I received at the Premises had union dues deducted from them. I signed the authorization for the dues deducted on the Premises.
>
> 4. Michael Johnson was one of the three union representatives. He was one of those union representatives when Plaintiffs were terminated, and he was one of those representatives on November 21, 1996. He negotiated and signed the collective bargaining agreement on behalf of the union. A true

copy of that collective bargaining agreement showing his signature is attached as Exhibit A. Michael Johnson and two other union representatives were the only persons we deal with on union matters; they *were* the OCAW for us for all intents and purposes.

5. When union members had grievances, they reported these to the union representatives on the Premises and received from them the forms on which to make out grievances. When there was a disciplinary action against a union member, the union representative met with management on the Premises prior to any company action and was present on the Premises when the discipline was administered to a union member.

6. To my knowledge, OCAW had no place of business in Dallas County, other than the place of business at the Premises.

Declaration of Floyd Moss. The Declaration of Michael Johnson , the union representative who was actually served, confirms these facts. *Declaration of Michael Johnson.* Most notably, he states " While I was a union representative, the only place of business that the union, OCAW, had was at the Premises", The OCAW clearly had a place of business in Dallas County, and it was the Ashland Oil premises.

It is equally clear that Michael Johnson was the agent of OCAW here. He was one of the union representatives in the plant. He negotiated and signed the collective bargaining agreement on behalf of *both* the international union, the defendant here, and the local. See Exhibit A to Johnson declaration. While the Magistrate Judge makes much of the fact that the international and local entities are separate, he ignores the fact that Mr.

Johnson was in fact the authorized agent of the international union. He was authorized to use the union telephone line. He represented the union when there was discipline to be imposed on union members. And he received summons and complaint, he passed those documents on to one of his superiors in the union, either Jimmy Roan, the international representative of the union, or Donshae Bowman, the chairman of the union at the plant. *Declaration of Floyd Moss; declaration of Michael Johnson.*

The OCAW argues that Mr. Johnson was not authorized under the union's charter to receive process and therefore service on him was insufficient to establish jurisdiction over the union. The content of the union's charter is irrelevant. The statutes of Texas are not governed by the internal documents of a defendant. The statute, not the union's internal regulations, defines who is agent for service of process, and Michael Johnson is such an agent by the terms of the statute. The OCAW wishes to escape from the service of any process by the simple device of refusing to grant the authority to receive service to the only representative it has in Texas. The law does not permit that kind of evasion. Service on Mr. Johnson is sufficient to bind the union.

CONCLUSION

Service was proper and the defendant's motion should be denied.

Respectfully submitted,

"S/" Eugene Zemp Du Bose
State Bar No. 06151975
3303 Lee Parkway, Suite 210
Dallas, Texas 75219
(214) 520-2985
FAX (214) 520-2985

Attorney For Plaintiffs

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he served the attached document on counsel for Defendant this 24th day of April, 1998, by U.S. Postal Service.

"S/ " Eugene Zemp DuBose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANTHONY C. AYERS, ET AL	§	Filed Apr 28 1998
	§	
Plaintiff	§	CIVIL ACTION NO.
	§	CA 3:95-CV-2754-R
	§	
	§	
V.	§	
OIL, CHEMICAL &	§	Entered on Docket
ATOMIC WORKERS	§	4/29 Pursuant to
INTERNATIONAL	§	F.R.CP. Rules 58 & 79a
UNION, AFL-CIO	§	
Defendant	§	Record 24

ORDER

After making an independent review of the pleadings, files and records in this case, and the Findings, Conclusions and Recommendations of the Unites States Magistrate Judge, I am of opinion that the findings and conclusions of the Magistrate Judge are correct and they are adopted as the findings and conclusions of the Court.

IT IS, THEREFORE, ORDERED that the findings, conclusions and recommendations of the United States Magistrate Judge are adopted.

IT IS FURTHER ORDERED that Defendant's Motion to Set Aside Default Judgment ism granted and Plaintiffs' default judgment is set aside.

IT IS FURTHER ORDERED that Defendant shall

file an answer in this action or otherwise file a response to Plaintiffs' complaint.

SIGNED AND ENTERED this 28th day of April 1998.

"/S" Jerry Buchmeyer
UNITED STATES DISTRICT JUDGE

Record 24

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANTHONY C. AYERS,	§	Filed Aug 11 1999
ERNEST R. KING,	§	
DENSHIA MOORE, and	§	CIVIL ACTION NO.
JOSEPH C. WILLIAMS	§	CA 3:95-CV-2754-R
Plaintiff	§	
	§	
V.	§	
OIL, CHEMICAL &	§	Entered on Docket
ATOMIC WORKERS	§	Aug 11 1999
INTERNATIONAL	§	
UNION, AFL-CIO	§	
Defendant	§	Record 85

ORDER

On August 10, 1999, this Court heard oral argument on Plaintiffs' rule 60 Motion filed April 7, 1999, and Defendants Motion for sanctions, filed June 11, 1999. As stated in open court, it is hereby **ORDERED** that plaintiffs' motion and all pleadings filed in response to that motion be struck from the record.

It is further **ORDERED** that Defendant's Motion for Sanctions is **GRANTED**. The Court finds that Plaintiffs' Rule 60 Motion is premised on unfounded, baseless, and ridiculous personal attacks on Mr. Flynn and Mr. Watsky. The Court further finds that the allegations in the Rule 60 Motion accusing the Defendant and its attorneys of engaging in a conspiracy to commit fraud on the Court and to suborn perjury are baseless.

The Court also finds that Plaintiffs' groundless attacks continued in their Response to Defendant's Motion for Sanctions and in open court today.

The Court therefore sanctions Plaintiffs' attorney, Maelissa R.M. Watson as follows:

1. All costs and expenses incurred by the Defendant in responding to Plaintiffs' Rule 60 Motion and in preparing Defendant's Motion for Sanctions are taxed against Plaintiffs' attorney. These costs are not taxed against Plaintiffs themselves. Within twenty (20) days of the date of this Order, Defendant's attorneys shall submit to this Court proof of their fees and expenses. Ms. Watson will then have twenty (20) days within which to file her response.

2. Maelissa R.M. Watson is hereby barred from ever again appearing before Judge Buchmeyer.

It is so **ORDERED.**

SIGNED THIS 11 DAY OF AUGUST 1999.

"S/" Jerry Buchmeyer

UNITED STATES DISTRICT JUDGE

CHIEF JUDGE JERRY BUCHMEYER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANTHONY C. AYERS,	§	
ERNEST R. KING,	§	
DENSHIA MOORE, and	§	CIVIL ACTION NO.
JOSEPH C. WILLIAMS	§	CA 3:95-CV-2754-R
Plaintiff	§	
V.	§	
OIL, CHEMICAL &	§	
ATOMIC WORKERS	§	
INTERNATIONAL	§	Record 92
UNION, AFL-CIO	§	
Defendant	§	

ORDER GRANTING DEFENDANT'S FEE AND EXPENSES

Pursuant to the Court's order of August 11, 1999, on this day came to be considered Defendant's Fees and Expenses. The Court is of the opinion that said motion should be granted.

IT IS THEREFORE ORDERED that Defendant's motion for reimbursement of Fees and Expenses is in all things granted, and judgment shall be entered for the Defendant in the amount of $7,540.00 (seven thousand five hundred and forty dollars and no cents) for its reasonable and necessary attorney's fess and for $406.74 (four hundred and six dollars and seventy-four cents) for its reasonable coast and expenses.

SIGNED THIS 23th DAY OF SEPTEMBER, 1999

"S/" Jerry Buchmeyer
UNITED STATES DISTRICT JUDGE
CHIEF JUDGE JERRY BUCHMEYER

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10384

Filed May 05, 2000 – Charles R. Fulbruge III, Clerk

ANTHONY C. AYERS, ERNEST KING, DENSHIA MOORE, JOSEPH C. WILLIAMS

Plaintiffs-Appellants,

VERSUS

OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,

Defendant-Appellee

No. 99-11006

ANTHONY C. AYERS; ET Al.,

Plaintiffs,

MAELISSA R.M. WATSON,

Appellant,

OIL, CHEMICAL& ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,

Defendant-Appellee

Appeal from the United States District Court
For the Northern District of Texas, Dallas
(3:95-CV-2754-R)

Before REAVLEY, DAVIS and BARKSDALE, Circuit Judges.

PER CURIAM: *

After reviewing the record and considering the argument and briefs of counsel, we are satisfied that the district court committed no error in this case. Accordingly, the judgment of the district court is affirmed.

AFFIRMED

---

* Pursuant to 5th Cir, R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10384

Filed June 9, 2000 – Charles R. Fulbruge III, Clerk

ANTHONY C. AYERS, ERNEST KING, DENSHIA MOORE, JOSEPH C. WILLIAMS
Plaintiffs-Appellants

v.

OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,
Defendant-Appellee

No. 99-11006

ANTHONY C. AYERS; ET Al.,
Plaintiffs
MAELISSA R.M. WATSON,
Appellant

v.

OIL, CHEMICAL& ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,
Defendant-Appellee

Appeal from the United States District Court
For the Northern District of Texas, Dallas

ORDER:

(X) The motion of appellants for (x) stay ( ) recall and stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

( ) The motion of appellants for (x) stay ( ) recall and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including July 3, 2000. The stay is in force until the final disposition of the case by the Supreme Court, provided that the certificate of petition has been filed is also filed with this court within the time stated above. The clerk shall issue a mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of this stay unless the certificate is filed with the clerk of this court within that time.

"S/" Thomas M. Reavley
UNITED STATES CIRCUIT JUDGE

(2)

No. 00-63

FILED

AUG 9 2000

CLERK

IN THE

Supreme Court of the United States

ANTHONY C. AYERS, ERNEST R. KING, DENSHIA MOORE, JOSEPH C. WILLIAMS, MAELISSA R.M. WATSON,
Petitioners,

v.

OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether Petitioners generalized complaints about the judicial system, the trial of this cause and other proceedings in this case form a basis for granting a writ of certiorari, or otherwise show that Petitioners were denied due process.

II. Whether the Court of Appeals was correct in upholding the district court's ruling granting partial summary judgment which found that the Respondent did not breach the duty of fair representation by withdrawing unfair labor practice charges involving Petitioners.

III. Whether the default judgment in this matter was correctly set aside, because service of process on the Respondent was not accomplished.

IV. Whether the Petition should be denied because the sanctions assessed were justified in this case.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent Oil, Chemical & Atomic Workers International Union, AFL-CIO, oppose Petitioners Anthony C. Ayers's, Ernest R. King's, Denshia Moore's, Joseph C. Williams's and Maelissa R.M. Watson's Petition for Writ of Certiorari, as follows:

STATEMENT OF THE CASE

A. Statement Of Pertinent Facts.

Petitioners Ayers, King, Moore and Williams (collectively "Petitioners") are former production line employees of Ashland Chemical, Inc., ("Ashland") at Ashland's Dallas, Texas, facility. (Tr. at 5, 54, 104, 148).[1]

Petitioners were all discharged by Ashland between October of 1994 and January of 1995, during a union organizing drive. (Tr. at 5, 56, 121, 156). On or about 20 December 1994, Respondent Oil, Chemical & Atomic Workers International Union, AFL-CIO ("Respondent" or "Union") through its International Representative, John Dykes—filed Unfair Labor Practice charges with the National Labor Relations Board (NLRB), alleging that the discharge of Petititioners by Ashland was because of

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[1] Citations to Volumes 1-3 of the Record on Appeal, all consecutively paginated, are indicated thus: "([Vol.]R. at ___)." Citations to the Envelope of Exhibits, (containing the Motion for Summary Judgment, the Response and Reply, and the Exhibits thereto), paginated with Volumes 1-3 of the Record on Appeal, are indicated thus: "(E.E.R. at ___)." Citations to Volume 4 of the Record on Appeal (the trial transcript), which is separately paginated, are indicated thus: "(Tr. at ___)." Citations to the Supplemental Record, Volume 1, which is separately paginated, are indicated thus: "(S.R. at ____)." Finally, citations to the Supplemental Record, Volume 2 (the Rule 60 and Motion for Sanctions Hearing Transcript), separately paginated, are indicated thus: "(S. Tr. at ___)."

their support for the Union. (Tr. at 191, 197, 213; 1R. at 003, 245, E.E.R.at 636, 642).

The NLRB investigated the ULP charges and, at the investigation's conclusion, dismissed the charges against Ashland. (E.E.R. at 629, 636, 642). The NLRB determined, *inter alia,* that there was no evidence that the Petitioners received unlawful treatment by Ashland management because of their support of the Union. (E.E.R. at 629, 636, 642).[2] The NLRB dismissals occurred on 3 and 4 May 1995. (E.E.R. at 634, 639).

Meanwhile, during this same period, the Union and Ashland were engaged in negotiating their first collective bargaining agreement (CBA). (E.E.R. at 629). On or about 11 May 1995, the Union and Ashland reached tentative agreement on a contract. (E.E.R. at 630, 645). The tentative agreement provided, among other things, that the Union would withdraw all pending ULP charges, including those involving Petitioners. (E.E.R. at 630, 646). Jimmy Roan, the Union's International Representative, who had been conducting the Union's contract negotiations since March 1995, recommended acceptance of the Company's proposals. (E.E.R. at 630). Mr. Roan believed that the chances of getting the NLRB's General Counsel to reverse the Regional Director, and reinstate the ULP charges were slim. (E.E.R. at 630). Acceptance of the Ashland proposals would include not appealing the charges involving the Petitioners, and withdrawing some other charges that did not involve Petitioners. (E.E.R. at 630). Mr. Roan believed that acceptance of Ashland's proposals was in the best interest of the bargaining unit as a whole. (E.E.R. at 630).

The Union Negotiating Committee agreed with Mr. Roan's recommendations. (E.E.R. at 630). The membership was in-

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[2] According to the NLRB, the evidence also showed that Petitioner Williams was a supervisor, and thus not entitled to the protection of the Act. (E.E.R. at 642).

formed of the details of Ashland's proposal, and voted to ratify the proposed contract, which went into effect as of 11 May 1995. (E.E.R. at 630). The charges were withdrawn and this suit ultimately ensued (1R. at 004).

The District Court granted Summary Judgment as to the portion of Petitioners' claims that alleged that the Union had breached the duty of fair representation by withdrawing the NLRB charges.(2R. at 249-53) The remainder of Petitioners' claims were tried to a jury, and rejected by a unanimous verdict. (3R. at 374, 379, 381)

Following the jury verdict, Petitioners' new counsel, Petitioner Maelissa R.M. Watson, ("Petitioner Watson") filed a "Motion and Brief for Relief Under Final Judgment" under FED. R. CIV. P. 60. Petitioners' Rule 60 Motion was denied as baseless, and sanctions assessed against Petitioner Watson. (S.R. at 0001).

B. Pertinent Procedural Facts.

Petitioners filed this action in the United States District Court for the Northern District of Texas, Dallas Division, on or about 17 November 1995. (1R. at 001). The Petitioners complained of a breach of the Duty of Fair Representation (DFR) by Respondent, in violation of of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185. (1R. at 001-005).

A default judgment was granted on 23 May 1996. (1R. at 027-028). Upon learning of the Judgment, the Union filed its Motion to Set Aside Default Judgment on 15 July 1997 (1R. at 029-032).

Magistrate Judge Sanderson entered his Report and Recommendation recommending that the Default Judgment should be set aside on 13 April 1998. (1R at 158-160). Petitioners filed an Objection to the Magistrate Judge's Report on 24 April 1998. (1R. at 161). The district court adopted the Magistrate Judge's

Report and Recommendation that the default judgment be set aside by an Order dated 28 April 1998. (1R. at 166).

Petitioners filed a Motion for Rehearing on the default judgment issue on 7 May 1998. (2R. at 167). The Magistrate Judge recommended that the Motion be denied by his Report and Recommendation of 26 May 1998. (2R. at 172, 176-82, 183-85). Petitioners filed their Objection to the Report of the Magistrate on 5 June 1998. (2R. at 186, 198). The district court overruled the objections and adopted the report by its Order of 24 June 1998. (2R. at 205-06).

Meanwhile, on 8 May 1998, the Union had filed its Answer to Petitioners' Original Complaint. (2R. at 173-75). The Union's Answer denied Petitioners' allegations, and raised the affirmative defense that Petitioners had failed to state a claim upon which relief could be granted. (2R. at 173-75).

The Union then submitted a Motion for Summary Judgment, contending, *inter alia*, that Petitioners could show no DFR breach. (E.E.R. at 590-600). The district court entered its Memorandum Opinion and Order, entered Summary Judgment against Petitioners on its claims that the Union had breached the DFR in withdrawing certain NLRB charges involving Petitioners, but holding that Petitioners retained a viable cause of action on the issue of whether the Union had sufficiently represented them before the NLRB. (2R. at 244-53).

Trial by jury on Petitioners' extant claims was held on 8-9 March 1999. (Tr. at 1, 3). The jury unanimously found in favor of the Union. (3R. at 374). A Final Judgment was entered by the district court in favor of the Union on 9 March 1999. (3R. at 381). Petitioners trial counsel, Eugene Z. DuBose, filed Motions to Withdraw and to Substitute Maelissa R.M. Watson, (who sat second chair at the trial), as Counsel on 21 April 1999. (3R. at 417-419). The district court granted these motions by its Order of 23 April 1999. (3R. at 420).

Even prior to the Substitution Order, Petitioners' new counsel, Petitioner Watson, filed a Notice of Appeal on 7 April 1999. (3R. at 390). The Notice of Appeal sought review of the Final Judgment, the earlier partial Summary Judgment, and the Orders setting aside the Default Judgment in favor of Petitioners. (3R. at 390).

That same day (7 April 1990), Petitioners' new counsel filed a "Rule 60 Motion and Brief for Relief Under Final Judgment." ("the Rule 60 Motion") (3R. at 382). The Union filed a Response to Petitioners' Rule 60 Motion on 4 May 1999. (3R. at 425). On 10 May 1999, the Union informed Petitioners' counsel that it intended to file a Motion for Sanctions in the event the Rule 60 Motion was not withdrawn. (3R. at 515-16). The Rule 60 Motion was not withdrawn and the Union filed its Motion for Sanctions on 11 June 1999, contending that Petitioners' Rule 60 Motion was false, unfounded and frivolous. (3R. at 508-527). A hearing before U.S. District Judge Jerry Buchmeyer was held on both the Rule 60 Motion and the Union's Motion for Sanctions on 10 August 1999. (3R. at 528-581, S.R. at 0001, S.Tr. at 1-2). By its Order of 11 August 1999, the district court denied the Rule 60 Motion, granted the Motion for Sanctions, and ordered that Petitioner Watson was barred from ever appearing again before Judge Buchmeyer. (S.R. at 0001-02).

Petitioners filed a "Petitioners' and Petitioners' Counsel's Motion for Reconsideration on Order for Sanctions" on 11 August 1999. (S.R. at 0003-05). The district court denied this motion by its Order of 13 August 1999. (S.R. at 0006-0008). Petitioners filed a second Notice of Appeal of the district court's Order of 11 August 1999, and of the Order denying the Motion for Reconsideration of 13 August 1999. (S.R. at 0013).

The Union moved to consolidate the two appeals. By order dated 29 October 1999, the motion to consolidate was granted.

On 5 May 2000, the Fifth Circuit affirmed the judgment and orders of the district court. (App. at 24-25).[3]

SUMMARY OF THE ARGUMENT

The Petition for writ of certiorari should be denied because the Petition is founded upon generalized complaints of unfairness that do not implicate due process or otherwise show sufficient reason to grant a writ of certiorari. As to the specific manner in which the case was disposed of below, Respondent maintains that the district court correctly set aside the default judgment originally entered in this matter because, among other things, the Petitioners did not properly effect service on the Union, thus failing to afford the Union proper notice of the suit, and did not make a record sufficient to support the default judgment. Also, the Union advanced a meritorious defense.

Further, the district court correctly granted Summary Judgment against the Petitioners as to their claim that the Union had breached the DFR by withdrawing the ULP charges. As the district court's opinion makes clear, the final product of the collective bargaining process may constitute a breach of the DFR only if it can be fairly characterized as so far outside a wide range of reasonableness that it is wholly irrational or arbitrary. The district court correctly found that this was not the case with respect to the Union's decision to withdraw the ULP charges involving the Petitioners.

Finally, Respondent maintains that Petitioners' Rule 60 Motion was baseless and completely unfounded, and constituted sanctionable conduct under Rule 11, for which the district court correctly assessed sanctions. The Fifth Circuit properly upheld the district court's actions, and the jury's verdict, on appeal. Thus, the petition for writ of certiorari should be denied.

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[3] Citations to "(App. at ___)" refer to the pages of the Appendix bound with Petitioners' Petition. Citations to "(Pet. at ___)" refer to Petition.

REASONS WHY THE PETITION SHOULD BE DENIED

I. PETITIONERS GENERALIZED COMPLAINTS ABOUT THE JUDICIAL SYSTEM, THE TRIAL OF THIS CAUSE AND OTHER PROCEEDINGS IN THIS CASE DO NOT FORM A BASIS FOR GRANTING A WRIT OF CERTIORARI, OR OTHERWISE SHOW THAT PETITIONERS WERE DENIED DUE PROCESS.

In large part, the Petition consists of generalized complaints about the courts of this country being in crisis; about the credibility of the judicial system being "seriously questioned by an irate and frustrated public;" the unfairness of Federal Courts in the Northern District of Texas; and how form and technicalities have taken precedents over the alleged merits in Federal court proceedings. (See e.g. Pet. at 8-11). Petitioners opine that Dallas prides itself as ". . . not part of the deep South" but that its ". . .culture and governance still reflect a lot of the prejudices and stereotypes of old;" and that litigation is expensive and cumbersome, and many parties choose to utilize arbitration to resolve their disputes. (Pet. at 9, 10-11).

These contentions and allegations, while they may very well be true, are unsupported by any citations whatever to the record and are simply not germaine to the considerations governing review on certiorari enunciated in SUP CT. R. 10. Petitioners point to no decision of a U.S. court of appeals, or of this Court, in conflict with this case; and presented no evidence that the decision in this case has departed from the usual course of judicial proceedings. Further, Petitioners have not shown that the resolution of this case reached by the jury and the district court, and affirmed by the Fifth Circuit, in any way raises a novel issue of Federal law to be decided by this Court. Instead, Petitioners inform us that Respondent ". . . cannot find shelter behind old, Supreme Court decisions." (Pet. at 12).

Petitioners make several allegations of improper procedure in the conduct of this case, but these claims are easily shown to be meritless upon examination. In the first place, Petitioners apparently contend that Respondent engaged in racially based exclusions to the jury venire during the trial of this cause. Petitioners ". . . from their visual observations claim that there was no black person left on the Jury. In the Record the Judge appeared to be in doubt. . ." (Pet. at 12). Turning to the record, trial counsel for Petitioners claimed that three out of four black members of the jury panel were struck. (Tr. at 41-42). Of these three persons, one was in fact struck *by Petitioners*. Respondent advanced race-neutral explanations concerning its strikes, which were credited by the district court. (Tr. at 42-43). Petitioners offered no evidence that the reasons advanced by Respondent were pretextual or that Respondent acted based on any improper motive.[4] Consequently, the preemptory challenges pass muster under *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986); *see also Great Plains Equip., Inc. v. Koch Gathering Sys., Inc.*, 45 F.3d 962, 965 (5th Cir. 1995) (holding that once challenged attorney explains strikes, other party must show that reasons given were pretextual or inadequate). Petitioners claims of racial discrimination in the jury selection are thus devoid of merit.

Petitioners further contend, *inter alia*, that ". . . the Jury telegraphed contempt for persons who sue" and that "[t]he Union lawyer, with great finesse, subtlety [sic] exploited race and the anti-litigious sentiment that was previously demonstrated" and that the Union ". . . not in exact words but by their actions portrayed the Plaintiffs in a stereotypical manner as black persons looking for a hand out and money grabbing blacks." (Pet. at 12-

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[4] One of the venirepersons in question was struck because he was a teacher and as such had appeal rights in the employment context. (Tr at. 43) The other venireperson was a union member with a grievance pending. (Tr. at 43). Such backgrounds were considered undesirable by Respondent's counsel in the context of a DFR proceeding. (Tr. at 43).

13). These are outrageous and utter falsehoods. Petitioners cite not *one iota* of evidence, from the record or otherwise, supporting these slurs on the jury, much less on counsel for Respondent, other then their own clearly self-interested accusations.

Petitioners, again without citation of evidence, chide Respondent for offering evidence regarding other litigation that Respondent itself had allegedly sought to exclude by a Motion in Limine. (Pet. at 15). However, no Order in Limine was actually approved by the district court, and, in any case, the trial record is devoid of objections by Petitioners to the introduction of any such evidence. Petitioners contend that Respondent ". . . deliberately attempted to hold the Petitioners out in a bad light. . ." (Pet. at 15). Judging from the tenor of the Petition, Petitioners are really contending that any attempt whatever by Respondent to present its version of the facts was prejudicial and inflamatory.

Petitioners further contend that Respondent's local counsel failed to follow ethical rules regarding his obligation ". . . to investigate between anticipated false evidence and past false evidence" (Pet. at 14). Respondent denies that any false evidence was presented—and Petitioners have nothing but their own conclusory allegations to say otherwise.

Finally, Petitioners allege that ". . . the Judicial System broke down in the Fifth Circuit" when Petitioner Watson's brief, and the accompanying appendix, on the sanctions portion of this case, was lost or disposed of by the Fifth Circuit's clerk. (Pet. at 19-20). However, Petitioners are unable to show any resulting harm—because a replacement brief was sent via facsimile to the Court of Appeals. (Pet. at 20). The appendix, which was not replaced, consisted of materials which were all in the court records—and the record was in the hands of the court of appeals. The "Judicial System" most certainly did *not* break down in the Fifth Circuit. The Fifth Circuit correctly upheld the disposition

of this case by the district court, and the Supreme Court should do the same by denying the petition for writ of certiorari.

II. THE COURT OF APPEALS CORRECTLY UPHELD THE DISTRICT COURT'S RULING GRANTING PARTIAL SUMMARY JUDGMENT WHICH FOUND THAT THE RESPONDENT DID NOT BREACH THE DUTY OF FAIR REPRESENTATION BY WITHDRAWING UNFAIR LABOR PRACTICE CHARGES INVOLVING PETITIONERS.

The Fifth Circuit correctly upheld the district court's finding that the Respondent did not breach the DFR by withdrawing ULP charges involving Petitioners. Petitioners alleged that the Union breached the DFR in two ways: first, by failing to represent them adequately in the NLRB investigation; and, second, by agreeing with Ashland not to appeal the NLRB's dismissal of their ULP charges. (2R. at 246, E.E.R at 606-07). The district court, in its Memorandum Opinion and Order—granted partial summary judgment to the Union—agreeing that the Union did not breach the DFR by withdrawing the ULP charges. (2R. at 249-53). However, the district court found that the Petitioners had raised an issue of fact as to whether the Union had satisfied the DFR with respect to its handling of the ULP charge investigation by the NLRB—and reserved that issue for trial. (2R. at 249). The district court's granting of partial summary judgment was correct, and should be upheld.[5]

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[5] Petitioners designate the Final Judgment in this case, entered on 9 March 1999—as a judgment to be reviewed in this case. (Pet. at 3). However, the Petition presents no argument bearing on the Final Judgment, so it is not further discussed here. A jury verdict—such as represented by the Final Judgment, should be reversed ". . . only if reasonable minds exercising impartial judgment could not have arrived at the verdict." *Weller v. Citation Oil & Gas Corp.*, 84 F.3d 191, 194 (5th Cir. 1996), *cert. denied*, 519 U.S. 1055, 117 S.Ct. 682 (1997). Petitioners have not shown that reasonable minds could

It is well-settled that a union, such as Respondent, may only breach the DFR if its actions are either "arbitrary, discriminatory or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190, 87 S.Ct. 903, 916 (1967). In 1991, this Court considered precisely the problem Petitioners complain of here, and found that the *Vaca* standard applies to ". . . all union activity, including contract negotiations. We further hold that a union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness.' . . . as to be irrational." *Air Line Pilots Ass'n. v. O'Neill*, 499 U.S. 65, 67, 111 S.Ct. 1127, 1128 (1991)(*citing Ford Motor Co. v. Huffman*, 345 U.S. 330, 338, 73 S.Ct. 681, 686 (1953)). The district court's Memorandum Opinion and Order granting partial summary judgment relied heavily on *O'Neill*. (2R. at 249-253).

The situation in the matter at bar is precisely analogous to *O'Neill*. The Union was attempting to obtain its first CBA with Ashland, and was faced with a situation where it was forced between choosing to process the Petitioners' disputed ULP charges —charges which had already been found by the NLRB Regional Director to lack merit—and between a CBA for an entire bargaining unit. (E.E.R. at 632-43). As the district court clearly recognized, it was certainly "not illogical" for the Union's negotiators to choose to withdraw the charges, and accept the agreement—because getting the agreement had been the point of negotiations, and was in the best interests of the bargaining unit as a whole. (2R. at 252, E.E.R. at 630).[6] It is important to evaluate ". . . the rationality of a union's decision in light of both the

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not have arrived at the verdict reached in this case—so review of the jury's decision via a writ of certiorari should be denied.

[6] The district court correctly pointed out that the Union's agreement with Ashland involved the dismissal of *all* pending Unfair Labor Practice claims ". . . it did not single out Plaintiffs' charges as the only ones that would be withdrawn." (2R. at 252).

facts and the legal climate that confronted the negotiators at the time the decision was made." *Id.* at 78, 111 S.Ct. at 1136.

In May of 1995, the Union negotiators knew that they were faced with an Ashland contract proposal acceptable to most of their membership, at the price of some ULP charges that had already been found meritless. It was certainly within the "wide range of reasonableness" allowed by *O'Neill* for the Union to decide to accept Ashland's proposal, and to forbear from appealing the NLRB ULP charges. As this Court clearly appreciated in *O'Neill*, such compromises are inherent in the nature of collective bargaining and negotiating. "A bad settlement may be more advantageous in the long run than a good lawsuit." *Id.* at 81, 111 S.Ct. at 1137. As the district court recognized, "[i]n reaching a labor agreement, it is impossible for the union to satisfy completely each of its members; some give and take is inevitable." (2R. at 252). Clearly, under the analysis set out in *O'Neill*, as applied by the district court, summary judgment in the Union's favor on the issue of whether the Union had breached the DFR by withdrawing the ULP charges involving Petitioners was correct. The Fifth Circuit was thus correct when it upheld the district court's partial summary judgment.

III. THE DEFAULT JUDGMENT IN THIS MATTER WAS CORRECTLY SET ASIDE, BECAUSE SERVICE OF PROCESS ON THE UNION WAS NOT ACCOMPLISHED.

Petitioners contend that a Default Judgment in this matter was wrongfully set aside by the district court, and that the Respondent "deliberately flaunted and circumvented State law [pertaining to service of process] with impunity." (Pet. at i, 21). The record is devoid of evidence supporting these assertions.

A. The Union Showed Good Cause to Set Aside the Default Judgment Because Service of Process Was Not Properly Effected.

FED. R. CIV. P. 4 provides that service pursuant to ". . . the law of the state in which the district court is located" is suffi-

cient to give the District Court jurisdiction. As will be seen, Petitioners did not obtain valid service under Texas law, and the default judgment was thus void. "A default judgment entered where there has been no proper service of the complaint is *a fortiori*, void, and should be set aside." *Gold Kist. Inc. v. Laurinburg Oil Co., Inc.*, 756 F.2d 14, 19 (3rd Cir. 1985); *See also Petrucelli v. Bohringer & Ratzinger GmBH Ausdereitungsanlagen*, 46 F.3d 1298, 1304 (3rd Cir. 1995) (holding that defects in the service of process render a judgment void).[7]

Petitioners' Original Complaint correctly recognized that the Union is an "unincorporated association." (1R at 002). Under Texas law, service on unincorporated associations can be had, firstly, by serving the president, secretary, treasurer or general agent of the unincorporated association. TEX. REV. CIV. STAT. ANN. art. 6134 (Vernon 1970); *see also Otto Vehle & Reserve Law Officers v. Brenner*, 590 S.W.2d 147, 153 (Tex. Civ. App.—San Antonio 1979, no writ). Also, unincorporated associations may be served by serving an agent or clerk employed in the unincorporated association's "office, place of business or agency" if it maintains such a facility within the State. TEX. CIV. PRAC. & REM. CODE. ANN. § 17.021 (Vernon 1997) ("Section 17.021").[8]

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[7] In *Petrucelli*, as in the matter at bar, the person served with process was not the Defendant's authorized agent. *Petrucelli*, 46 F.3d at 1304.

[8] In fact, the Union does maintain an office within the State—in the Houston area, at Webster, Texas, which has been located there since 1992. (1R at 140-41). The Union's headquarters are located in Lakewood, Colorado. (1R at 141). Local 4-208, not a party to the suit, maintains an office at 15001 Trinity Boulevard in Fort Worth, Texas. (1R at 141). The Summons was served at none of these locations. (1R at 112-13). Moreover, Petitioners were in possession of correspondence from Union President Wages which provided the names of Union officers and the Union's address on the Union's letterhead. (1R at 085).

Petitioners are evidently outraged that Respondent ". . . refus. . .[ed] to designate an agent for service of process." (Pet. at i). As Petitioners recognized, Respondent is an unincorporated association, and not a corporation—and Petitioners have provided no support whatever for the proposition that unincorporated associations are required to appoint registered agents or that it is against "public policy" for them not to do so.

As will be shown, to be an "agent" for service of process, the "agent" must have authority to receive service. In the matter at bar, the Summons was directed to "Michael T. Johnson or Donshea Bowman, Representative/Agent" of the Respondent. (1R at 112-13) The Complaint makes no reference to either Johnson or Bowman—other than the bald, unsupported assertion that they are agents of the Respondent. (1R at 001-06). Under Texas law, service on an agent is *not* sufficient to effect service on the principal unless the Defendant to be served *expressly authorized* an agent to receive process. *H.L. McRae Co. v. Hooker Const. Co.*, 579 S.W.2d 62, 64 (Tex. Civ. App.—Austin 1979, no writ).[9] "A naked allegation of agency alone will not support rendition of a default judgment." *Encore Builders v. Wells*, 636 S.W.2d 722, 723 (Tex. App.—Corpus Christi 1982, no writ), (*citing White Motor Co. v. Loden*, 373 S.W.2d 863 (Tex. Civ. App.—Dallas 1963, no writ)).

Ashley Forest Apts. (Lindsay Enterprises) v. Almy, 763 S.W.2d 293 (Tex. App.—Houston [14th Dist.] 1988, no writ) construes Section 17.021, and is precisely on point. In *Ashley*, plaintiffs had served an apartment complex owner by serving its

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[9] According to Respondent's President, Robert Wages, Michael T. Johnson ". . .is not and has never been an authorized agent. . ." of the Union. (1R at 039-040). Moreover, under Article I, §5 of the Union's Constitution and Bylaws, only individuals authorised in a writing signed by an appropriate official designated to so act may act as an agent for the OCAW, or any chartered or subordinate body of the OCAW. (1R at 120).

manager, located at the apartment complex. *Id.* at 294. Like Petitioners here, the *Ashley* plaintiff contended that service on the manager was valid under Section 17.021. *Id.* at 295. The *Ashley* court found that service was **not** valid under Section 17.021, because there was no affirmative showing that the "agent" was in fact an agent for service of process. See *id.* at 295-96.

Moreover, ". . . whether the person served was in fact the agent for service of process must ***be affirmatively established by evidence before a default judgment can be sustained. The pleadings, recitals in the citation, and statements contained in the officer's return are not, in themselves alone, sufficient to establish this requirement.***" *Hanover Modular Homes of Taft, Inc. v. Corpus Christi Bank & Trust*, 476 S.W.2d 97, 99 (Tex. Civ. App.—Corpus Christi 1972, no writ) (emphasis supplied). "A party relying on service upon an agent has the burden of proving existence of the agency relationship; it cannot be presumed." *Anderson v. Clajon Gas Co.*, 677 S.W.2d-702, 704 (Tex. App.—Houston [1st Dist.] 1984, no writ), (*citing Buchoz v. Klein*, 143 Tex. 284, 184 S.W.2d 271 (1944)).[10]

In this case, the return of service recites that the Summons and Complaint were served on Michael T. Johnson. (1R at 112-13). There is no finding on the face of the Default Judgment that Michael T. Johnson is a valid agent for service of process on the Respondent; no finding in the Default Judgment that the Respondent had appointed Michael T. Johnson its agent for service

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[10] Petitioners attempted below to use the Declarations of Floyd Moss and Michael Johnson to establish that Michael Johnson was an agent of Defendant. However, as the magistrate judge recognized, nothing in these declarations showed that Michael Johnson was a proper agent for service under Section 17.021. (1R at 158). As the magistrate commented: "Mr. Johnson's lack of knowledge that Defendant maintained an office in the State of Texas, standing alone, calls into serious question his capacity as an agent for service of process." (2R at 184). Further, as shown, the question of whether the person served was in fact a valid agent for service of process must be shown **before** a default judgment can be entered.

of process. (1R at 027-28). Consequently, as stated above, it cannot be shown that the Petitioners affirmatively established that Michael T. Johnson was the proper agent for service of process on the Respondent. Since Respondent was not properly served with summons and complaint, the district court lacked *in personam* jurisdiction over Respondent when it entered the Default Judgment, and that judgment was therefore void and correctly set aside. FED. R. CIV. P. 60(b)(4).

B. Federal Law Does Not Support Petitioners' Default Judgment.

Petitioners incorrectly contend that Federal law (29 U.S.C. § 185) supports their attempts to accomplish service of process in this matter. (Pet. at i). However, this statute is inapplicable in the matter at bar. In *Chapman v. Local 104, Int'l. Assn. of Machinists*, 199 F. Supp. 186 (S.D.W.V. 1961), the plaintiffs in that case, attempting to serve Local 104 of the Machinists Union with process, served one Childers, the chairman of the shop committee at the plaintiffs place of employment. *Id.* at 191. The court found that Section 185(d) was inapplicable, because under the terms of 29 U.S.C. § 185(a), Section 185(d) only applied to suits between employers and labor organizations, and that the plaintiffs, as individuals, could not utilize Section 185(d). *Id.* Interestingly, the Court also found that Childers could not be served under FED. R. CIV. P. 4 as an agent of Local 104, since his only duty was to process grievances on behalf of those who worked in his shop. *See id.* Similarly, Michael Johnson, the person served by Petitioners in this matter, was a rank-and-file *Ashland* employee who happened to be a Union negotiating committee member, and not an employee, officer or agent of Respondent. (1R at 045-46). In any case, Petitioners' service of process in this matter cannot be supported by Section 185.

IV. THE PETITION SHOULD BE DENIED BECAUSE THE SANCTIONS ASSESSED WERE JUSTIFIED IN THIS CASE.

Petitioner Watson contends that she was ". . .wrongfully and unfairly sanctioned when. . . she reported to the Court what she was legally, ethically and morally obligated to do." (Pet. at 17). As will be shown, this is a gross mischaracterization of the circumstances surrounding the sanctions which were quite properly assessed in this case.

A. The Rule 60 Motion.

The Petition for Review, like the briefs filed in the Court of Appeals is, for the most part, conspicuously silent on the document which occasioned the Motion for Sanctions—namely the Petitioners' "Rule 60 Motion and Brief for Relief Under Final Judgment" ("the Rule 60 Motion") filed on 7 April 1999, by Petitioner Watson, after Petitioners lost at trial.

This silence by Petitioners—specifically Petitioner Watson —is itself a comment on the bankruptcy of the Rule 60 Motion. The Rule 60 Motion was denied by the district court because it was:

> . . . premised on unfounded, baseless, and ridiculous personal attacks on. . . [counsel for the Union]. The Court further finds that the allegations in the Rule 60 Motion accusing the Defendant and its attorneys of engaging in a conspiracy to commit fraud on the Court and to suborn perjury are baseless. The Court also finds that Plaintiffs' groundless attacks continued in their Response to Defendant's Motion for Sanctions and in open court today.

(Order on Motion for Sanctions, S.R. at 0001)

The Rule 60 Motion primarily concerned three sets of allegations by the Petitioners: an assertion that Respondent's principal witness, John Dykes—lied on the witness stand; an accusation that Respondent's counsel engaged in race-bating; and

charges that Respondent's counsel suborned perjury. All of these accusations were correctly found by the district court to be outrageous and false.

1. Accusations of Perjury.

The Rule 60 Motion alleged, *inter alia*, that Respondent's principal witness at trial, John Dykes ". . . lied on a crucial issue. . ." (3R. at 382). Evidently, this lie consisted of Mr. Dykes ". . .perjur. . .[ing] himself by non disclosures" by ". . . not reveal[ing]. . . that Counsel. . . knew that to get a collective bargaining Agreement with Ashland, [that] John Dykes was undermined and replaced by Jimmy Roan, AND THAT JOHN DYKES CEASED TO COMMUNICATE WITH MS. WATSON DURING THAT CRITICAL PERIOD OF TIME." (3R. at 383)(emphasis in the original). Dykes is also alleged to have given ". . . false testimony to cover for the Union's sell out of the Plaintiffs." (3R. at 383); and to have ". . . assured Ms. Watson that Mr. Gregory Mooney, OCAW's General Counsel, would file the Appeal [to the NLRB] timely for Plaintiffs." (3R. at 383).

These allegations are nonsensical. (3R. at 383). Under 18 U.S.C. § 1621, perjury occurs where a witness, under oath ". . . states or subscribes any material matter which he does not believe to be true." Even assuming Petitioners are correct about the nature of Dykes alleged non-disclosures, Dykes could not commit perjury by "non disclosures"—particularly where Dykes *was never asked about these matters during trial.* Since Dykes was never asked these questions, he could not have lied, much less perjured himself.

2. Petitioners' Unfounded Allegations Of Race-Baiting.

Further, Petitioners Rule 60 Motion accused the Union of "adeptly play. . . [ing] to the Jury the traditional stereotypes of black people as persons looking for a hand-out from everyone" and as mischaracterizating the Petitioners to the jury as "'sue

happy', 'money grabbing blacks.'" (3R. at. 383, 385) Petitioners denounced these alleged actions as "a travesty of justice and a fraud on the Court." (3R. at 385). In fact, it is these allegations which were and are—a travesty. The Petitioners cited no evidentiary support for these outrageous accusations whatever, and there is no indication in the record that such arguments were in fact made to the jury. Petitioner Watson, was present for the entire trial, and knew or should have known full well that no such pejorative terms were ever uttered, by Respondent's witness, by any representative of Respondent, or Respondent's counsel. Petitioners presented no evidence whatever—in response to the Union's Motion for Sanctions—to support these specious allegations. As mandated by FED. R. CIV. P. 11, Petitioners were offered 21 days to withdraw the offending Rule 60 Motion. (3R. at 508, 515-16, 527). Petitioners refused. In such circumstances, sanctions may be imposed. *O'Brien v. Alexander*, 101 F.3d 1479, 1489 (2nd Cir. 1996).

3. Unfounded Accusation that Respondent's Counsel Presented False Evidence.

Petitioners' Rule 60 Motion stated, in pertinent part:

> . . . in order to set aside a judgment or order because of "fraud on the court", it is necessary to show an unconscionable plan or scheme which is designed to improper [sic] influence the jury in his [sic] decision. In the instant case the egregious test is met. This scheme and plan was perpetrated by Counsel . . . [for Respondent] . . . when to the Jury he blamed everyone but the Union for wrongs done and mistreatment of Plaintiffs, but he went to [sic] far, when he encouraged false testimony relating to the communications between John Dyke [sic] and Joseph Williams Attorney.

(3R. at 385) (quotation marks in original).

Petitioners had no grounds whatever to accuse the attorney for the Union of an unconscionable plan or scheme to improp-

erly influence the jury. If Petitioners had objections to Respondent's counsel's jury arguments, then they should have lodged them at trial, when the allegedly objectionable statements were made. *Fleming v. Harris*, 39 F.3d 905, 908 (8th Cir. 1994). However, Petitioners lodged no such objections. They have no evidence whatever of any "scheme" to improperly influence the jury. In any event, relief under FED. R. CIV. P. 60—as sought by Plaintiff—requires *proof* of misconduct or fraud by *clear and convincing evidence*. *Government Fin. Servs. v. Peyton Place, Inc.*, 62 F.3d 767, 771 (5th Cir. 1995). No evidence whatever has been produced here.

B. Sanctions were Warranted.

As shown above, all of the allegations presented in Petitioners' Rule 60 Motion were completely false and unfounded. Moreover, both Petitioners, and their counsel on appeal, Petitioner Watson, who were all present during the entire trial, had reason to know that these accusations were completely false and unfounded, thus rendering Petitioners Rule 60 Motion frivolous and sanctionable, as defined under FED. R. CIV. P. 11. Pursuant to FED. R. CIV. P. 11(c)(1)(A), Petitioners were given twenty-one-days notice of Respondent's intention to file the Motion for Sanctions. (3R. at 508, 515-16, 527).

Petitioners did not withdraw their Rule 60 Motion, nor produce *any* evidence supporting their Rule 60 motion going beyond the conclusions and opinions of Petitioners. The shrill tenor of Petitioners' Rule 60 Motion clearly shows that Petitioners were really contending that any effort of Respondent to present its version of the facts was itself an improper effort to influence the jury.

Petitioner Watson complains of her treatment by Judge Buchmeyer, that she was "subjected to . . . abusive behavior, interrputions, screaming" and that Judge Buchmeyer's "judicial rage was unjudicial." (Petition at 17). Respondent disputes this characterization of Judge Buchmeyer's deportment, and given

the scurillous content of Petitioner Watson's Rule 60 Motion, Respondent believes that Judge Buchmeyer's conduct was entirely appropriate. In any event, Petitioners' complaints about the sanctions hearing—which consume the bulk of the Sanctions Brief—are insufficient to show any abuse of discretion, especially in light of the unsupported allegations in the Rule 60 Motion.

As the district court correctly stated:

> The only abuse of the judicial process this Court has observed has been by Ms. Watson as she has carelessly strewn about extremely serious and completely groundless allegations of racism, perjury and conspiracy to commit fraud on the Court as casually as if she were discussing the weather. It is a travesty of justice that Ms. Watson would even consider voicing accusations with the potential to have such a damaging impact on others with absolutely no evidence to back them up. To continue to make these same allegations after it was clearly demonstrated in open court that they had absolutely no basis in fact is inexcusable.

(S.R. at 0007).

Clearly, the district judge, confronted with the patently false allegations contained in Petitioners' Rule 60 Motion—did not abuse his discretion in imposing sanctions. Respondent respectfully suggests that the Fifth Circuit was correct when it upheld Judge Buchmeyer's Order on the Motion for Sanctions. Likewise, the petition here should be denied

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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